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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 92-90
The Telephone Consumer Protection Act of 1991	)	
	)	

REPLY COMMENTS OF CITICORP

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SUMMARY

Citicorp believes the Commission is justified adopting the recommendations in the initial comments filed in this proceeding which will assist the Commission's efforts to make available to the public the benefits of modern autodialer and voice messaging technology while limiting unrestrained telephone solicitation. However, the Commission should reject the proposals made in the initial comments that are contrary to the achievement of this important federal goal.

The initial comments support adoption by the Commission of a definition of prior consent which includes instances where the called party has provided that telephone number to the calling party. Such a definition is essential to reflect the expectation of consumers that when they provide a telephone number, for example, in an application or an order form, they are giving prior express consent to be called at that number, using modern technology such as autodialers and prerecorded or artificial voice messages.

The initial comments also support the Commission's position that autodialed calls with solicitations or presentations by live operators should not be restricted in the same manner as autodialed calls which do not connect the called party with a live operator. Even if the autodialed call has an incidental recorded message facilitating contact with the live operator, such calls are far less intrusive than calls consisting entirely of a recorded message, allowing the called party no opportunity

to verbally respond or object to the call as it is in progress.

The Commission is supported by the initial comments in adoption of an exception for "established business relationships" covering not only current ongoing relationships, but also prior relationships, nascent ones based on consumer inquiries and applications, and terminated relationships, as long as the calls are made within one year of the particular business dealing. This definition is in line with Congress' expressed desire that the TCPA allow the use of modern dialing and voice messaging technology in conducting a full range of normal, expected and desired communications between businesses and consumers.

Support also exists in the initial comments for Commission adoption of an exception from the prohibitions of the Act for autodialed debt collection calls. This exception properly reflects the desires of the drafters of the TCPA and properly rejects attempts by some commenters to convert the FCC into an agency enforcing the Fair Debt Collection Practices Act.

The initial comments justify Commission extension of applicable TCPA exceptions to entities operating "on behalf of" parties authorized under the TCPA to make autodialed calls with prerecorded or artificial communications or solicitations. Failure to extend the exceptions would not only cripple the telemarketing industry, but also fail to recognize the extensive obligations with which third party contractors must comply, not only under the TCPA as the agent of the principal, but also under the contractual arrangement with the principal.

The initial comments overwhelmingly support Commission adoption of the "company-specific do-not-call" list approach over the national database alternative and others. The "company-specific do-not-call" mechanism, which is mentioned in the TCPA as an alternative to be considered by the Commission, has been shown to be, among other things, more efficient, more effective, more protective of consumer privacy rights, and more respectful of traditional customer-business relationships than the national do-not-call database approach and others.

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REPLY COMMENTS OF CITICORP

I. INTRODUCTION

Citicorp submits these reply comments addressing the initial comments filed in response to the proposals included in the Commission's April 17 Notice of Proposed Rulemaking ("NPRM") in this proceeding.

Many of these initial comments will assist the Commission in its development of reasonable and balanced policies and rules dealing with the use of automatic dialers delivering prerecorded and artificial communications and solicitations. However, the Commission should reject those proposals made by commenters which conflict with the language and spirit of the Telephone Consumer Protection Act ("Act" or "TCPA"). The Commission should likewise reject those that unreasonably restrict the development and use by businesses of efficiency-enhancing modern autodialer technology, and those that would deny consumers the benefits they are already enjoying due to autodialer and voice messaging technology. As the President noted in signing the legislation, "the Act gives the Commission flexibility to adapt its rules to changing market conditions [and] I fully expect that the Commission will use these authorities to ensure that the requirements of the Act are met at the least possible cost to the

economy."[1]

We address the relevant comments below.

II. INITIAL COMMENTS SUPPORT COMMISSION ADOPTION OF A PRIOR EXPRESS CONSENT DEFINITION WHICH INCLUDES INSTANCES IN WHICH A CALLED PARTY HAS PROVIDED THE TELEPHONE NUMBER TO THE CALLER

The Commission should clarify its rules to state that an autodialed call to an unauthorized destination "prohibited" under the Commission's proposed rules (e.g., nursing home, hospital) is made with the called party's express prior consent, and is therefore permissible, if the number called is one that has been provided by the called party to the caller. In support of this position, the American Bankers Association ("ABA") contends that the Commission should define prior express consent as including instances where the party being called has provided the caller with: (1) oral or written consent to receive such calls; or (2) has provided the number called as a number at which the party can be reached.[2] We agree with the ABA.[3]

Consumer Action opposes this concept of prior express consent, arguing that any exemption to prohibited uses of autodialers should be kept as narrow as possible, and that the organization using the autodialer must first inform anyone it plans to call of its intention to use such a mechanism. Under

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[1]NPRM at para. 29., citing TCPA Statement by the President, December 20, 1991.

[2]ABA Comments at 3.

[3]See Citicorp Comments at 3-6, 17-19.

Consumer Action's proposal, individuals objecting to receipt of such calls must be removed from the list of people to be called.[4]

The Commission should reject the position of Consumer Action, and the like views of Privacy Times, as inconsistent with the intent of the Act. The TCPA exemptions were explicitly contemplated by Congress to allow use of autodialers in special situations that were not deemed threats to privacy. The Act specifically exempts from the prohibition calls made "with the prior express consent of the called party."[5] The ABA's proposed definition of that phrase simply states it in pragmatic form -- that by providing a number at which he/she can be reached, the called party has in a very real way, expressly consented to being called at that number.

Furthermore, requiring additional prior consent when one form of consent has already been attained, would be redundant and unnecessary under the Act.[6] As we emphasized in our comments,

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[4]Consumer Action Comments at 3. See also Privacy Times Comments at 4.

[5]47 U.S.C. §227 (b)(1)(A),(B).

[6]Private Citizen recommends that the TCPA ban on autodialer calls to 911, hospitals, police, hospitals, hotel, etc., should be extended to ban calls: (1) to the private homes of medical professionals "on call" for emergency service, and (2) to the private homes of elderly citizens. The Commission should reject this recommendation as an unacceptably broad interpretation of Congressional intent in this area. Even if Congress did intend the TCPA autodialer ban to extend to telephone numbers at such private homes, such parties should be interpreted as having given prior express consent to be called at that private number if they originally provided the private number to the calling party.

when a party provides a phone number in a service application, during a product/service inquiry, or otherwise during the course of a normal business relationship with another party, the party providing the number expects to receive a call at the number given. That is why the number has been requested and given. The release of the number is itself a form of "prior express consent" to the party receiving the number, or someone calling on that party's behalf, to use the telephone to call her or him at that number using modern telecommunications technology.[7] To hold to the contrary would fly in the face of common sense and normal expectations of today's consumer marketplace.

III. INITIAL COMMENTS SUPPORT COMMISSION POSITION THAT AUTODIALED CALLS WITH LIVE PRESENTATIONS NOT BE RESTRICTED IN SAME MANNER AS AUTODIALED CALLS WITHOUT ANY LIVE PRESENTATION

In the NPRM, the Commission requests comment on the regulatory distinctions, if any, it should make between live solicitations and autodialed solicitations with prerecorded or artificial voice messages.[8] The commenters generally focus on the issue of whether live solicitations using autodialers should be exempted from the Act's restrictions that apply to autodialers which deliver prerecorded or artificial voice messages.

The Commission should reject the arguments of those commenters which assert that all autodialer calls create the same privacy threat, regardless of whether there is a live voice or a

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[7]Citicorp Comments at 3-5.

[8]NPRM at para. 26.

prerecorded one.[9] We agree with the majority of commenters that insofar as consumers are concerned, there is a vast difference between a recorded sales pitch and a live one that uses autodialer equipment.[10] One fundamental difference is that a person who receives a live sales pitch can voice her or his response, or objection, to a live operator. This ability for consumers to respond to or reject telemarketing messages allows one to maintain a feeling of control of her or his privacy interests. This control does not exist when a solicitation is made using solely a prerecorded message.[11]

The TCPA was not adopted to outlaw legitimate telemarketing activities. The aim of Congress in adopting the Act was to, in a balanced fashion, address consumers' privacy concerns while allowing telemarketing to continue as an important business technique.[12] The FCC has properly balanced these prominent consumer privacy rights with the equally significant federal goal of permitting legitimate telemarketing practices.

The Commission should also see through the National Consumers League's assertion that the NPRM improperly fails to consider Congress' concern about the "nuisance" effect of

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[9]See, e.g., Public Utilities Commission of Ohio ("Ohio PUC") Comments at 6; Center for the Study of Commercialism ("CSC") Comments at 7; Consumer Action Comments at 10-11.

[10]Direct Selling Assoc. ("DSA") Comments at 2; American Express Comments at 2; Sears Comments at 2; Ameritech Comments at 13.

[11]See, e.g., 137 Cong. Rec. H11312 (daily ed. Nov. 26, 1991) (statement of Rep. Cooper).

[12]Id.

unsolicited telephone marketing, focusing instead only on possible "invasion of privacy."[13] In the NPRM, the Commission explicitly requests comment on "whether it is in the public interest to recognize the inherent difference in the nuisance factor of auto dialer calls as opposed to live solicitations."[14] In addition, in highlighting the Commission's right to provide exemptions from the Act in the Senate legislative history, Senator Hollings combines the "invasion of privacy" and "nuisance" terms, stating that "certain types of automated or prerecorded calls ... are not as invasive of privacy rights as others....I use the term privacy rights to include the concepts of privacy invasion and nuisance."[15]

The Commission should also clarify that proposed Section 64.1100 (a)(2), as well as the proposed restrictions for calls to destinations such as emergency, hospital, and cellular numbers, and the statutory provisions underlying these sections, do not apply to autodialer calls which use a recorded message solely to facilitate communication with a live operator.[16] As we stated in our comments in relation to Section 64.1100 (a)(2), this category of prerecorded or artificial messages should be treated by the Commission, at most, as "commercial call[s] with no

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[13]National Consumers League Comments at 9-12.

[14]NPRM at para.23.

[15]137 Cong. Rec. S18784 (daily ed. Nov. 27, 1991)(statement of Sen. Hollings).

[16]Citicorp Comments at 6-7.

advertisement."[17] Such a limited exemption would pose minimal danger to consumers of nuisance or invasion of privacy, because of specific nature of the message.

The Commission should also exempt prerecorded or artificial messages which are used to facilitate contact with a live operator from the prohibited destination rules of Section 64.1100(a)(1). As stated above, when calls are made to these restricted numbers, or any others, using a telephone number that has been provided by the called party, that called party has given express prior consent to be called at that number by the party who received the number (or a third party calling on behalf of the authorized party). That prior express consent must, in this day and age, be held to sanction use of modern telecommunications technology, such as an autodialer equipped with a prerecorded or artificial message, to facilitate contact with a live operator and complete the call.

The Commission should find that live solicitations are less intrusive than calls made using a recorded message for the sales pitch. In the live sales pitch, whether or not an incidental recorded message is temporarily employed, called parties have the opportunity to object to the call and hang up as soon as the live operator comes on the line, or they are free to inform the operator that they do not wish to receive any future calls at that number from that telemarketer. The called party has no

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[17]Citicorp Comments at 21-22.

opportunity to object to a recorded solicitation. The Commission's final rules should reflect this distinction. It is an important one that leads to recognition that called parties, among other things, can with live operators assert their own privacy interests and become listed in "do-not-call" list.

IV. INITIAL COMMENTS SUPPORT COMMISSION ADOPTION OF AN EXCEPTION FROM THE ACT'S PROHIBITIONS FOR PRIOR AS WELL AS CURRENT BUSINESS RELATIONSHIPS

In the NPRM the Commission requested comment on whether the exemption to liability for calls placed by a caller, or on behalf of a caller to its clientele, should extend to calls to prior customers in addition to existing customers.[18]

The Commission should expressly extend the "business relationship" exception to a realistic spectrum of prior business relationships. In fact, we have found in the comments meaningful agreement on this issue among diverse parties. Government, consumer interests, and business have asserted in this proceeding that the prior business relationship exception should cover dealings up to one year prior to the autodialed call.

The Ohio PUC, for example, recommends that for an "established business relationship" to exist a transaction must have taken place between the parties within the last twelve months.[19] Similarly, Consumer Action suggests that for a

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[18]NPRM at paras. 13-16.

[19]Ohio PUC Comments at 3.

business relationship exception to apply for "current clientele," the called party must have done business with the calling party within a one-year period.[20] We agree. [21] Other commenters advocate more flexible definitions of prior business relationships which could allow the exception to extend for an even greater period of time than 12 months prior to the autodialed call.[22]

In contrast, CSC asserts that the FCC's proposed exception for autodialed "prior business relationship" calls is overbroad.[23] CSC proposes that the language of the "established business relationship" exception be narrowed to require actual consent, and to permit autodialed calls only where a "current" or "ongoing" relationship exists.[24] For a "current" relationship to exist in the credit card context, according to CSC, a person with a credit arrangement with the company must have purchased something within the prior year, or must have

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[20]Consumer Action Comments at 6.

[21]See Citicorp Comments at 13-14; see also ABA Comments at 2; Coalition Comments at 6. The "Coalition" consists of Banc One Corp., the California Bankers Clearing House Assoc., First USA Bank, the New York Clearing House Assoc., QVC Network, and VISA U.S.A., Inc.

[22]American Express Comments at 17; Household International Comments at 3-4 (no strict parameters for prior business relationship exemption; caller should demonstrate "reasonable" basis for reliance, based on several factors); Sears Comments at 6 (established business relationship exists within a "reasonable" period of time prior to telephone solicitation).

[23]CSC Comments at 3-5.

[24]CSC Comments at 5.

recently used the card.[25]

The Commission should reject the CSC proposal as unacceptably narrow. A requirement of actual consent where an "established business relationship" exception has been established is contrary to the goals established in the legislative history of the TCPA.[26]

Moreover, CSC's definition of a "current" business relationship in the credit card context ignores the nature of the card product. A recent purchase or recent use of the card is not necessary to demonstrate the existence of a business relationship between the cardholder and card issuer. Rather, it is the fact that the cardholder has a credit card that may be accessed at any time to make a purchase or take a cash advance that demonstrates the existence of a business relationship between the cardholder and the card-issuing institution.[27]

As noted in our comments, the Commission should also expressly include within the exception for "prior or current business relationships" additional relationships where calls would reasonably be expected under normal circumstances.[28] These additional relationships would include situations: (1)

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[25]CSC Comments at 5.

[26]H.R. Rep. No. 317, 102nd Cong., 1st Sess. 14 (1991).

[27]The faulty CSC argument is analogous to arguing that an insurance company and a policyholder only have an established business relationship if the policyholder recently made a claim due to some incident covered by the policy.

[28]See Citicorp Comments at 12-14.

where the calling business and the called individual had a business relationship terminated no longer than one year prior to the time the call is made and (2) where the called individual has submitted or made an application or inquiry to the calling business regarding its products or services.[29] An example of a recently terminated business relationship which should remain permissible under the TCPA was expressly noted, for example, by the House Energy and Commerce Committee, in its report on H.R. 1304. The Committee Report stated that "a magazine publisher should be able to contact someone who has let their subscription lapse." [30] Numerous commenters support an "established business relationship" exception that includes recently terminated relationships and preliminary contacts.[31]

The Commission should permit the use of autodialed calls with or without artificial or prerecorded voice messages in the case of ongoing business relationships, as well as nascent, and recently terminated or prior business relationships.[32]

V. INITIAL COMMENTS SUPPORT COMMISSION ADOPTION OF EXCEPTION FROM ACT'S PROHIBITIONS FOR AUTODIALED DEBT COLLECTION CALLS

The Commission concluded in the NPRM that debt collection

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[29]Id. at 14.

[30]See Citicorp Comments at 12-13, citing H.R. Rep. No. 317, 102nd Cong., 1st Sess. 14.

[31]See, e.g., American Express Comments at 17; American Financial Services Comments at 4; American Newspaper Publishers Assoc. ("ANPA") Comments at 12-13; Sears Comments at 5-6.

[32]See Citicorp Comments at 11-17.

calls that otherwise comply with all applicable collection statutes are commercial calls that do not adversely affect the privacy concerns that the TCPA was designed to protect.[33] The responses to the Commission's request for comment on this issue indicates this position is warranted and sound.

Very few parties oppose an exception which would permit debt collection calls in the autodialer context. Those that do belie a misunderstanding of the Fair Debt Collection Practices Act ("FDCPA"). The FDCPA was enacted to protect debtors from harassment from debt collectors. Those potential instances of abuse cited by certain commentators are already protected by the FDCPA; they need not beseech the Federal Communications Commission to enforce the debtor's statutory right.

For instance, Privacy Times opposes the exemption for debt collection calls, stating that "[t]o authorize computerized debt collection calls when such calls would systematically result in the unauthorized disclosure of sensitive and confidential derogatory financial data would be a gross miscarriage of public policy...."[34] What Privacy Times does not know, apparently, is that the FDCPA explicitly prohibits the creditors who use

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[33]NPRM at paras. 15-16.

[34]Privacy Times Comments at 4. Consumer Action also states that it is opposed to the creation of an exemption for debt collection. Consumer Action Comments at 7. However, this opposition appears to be focused on the assumption that autodialers will be used for the purpose of leaving recorded collection messages, rather than to enhance the efficiency of live operators. As we discuss below, this should not be a concern of the FCC. Even if such an unlikely situation were to arise, it can be fully addressed and enforced under the provisions of the FDCPA.

autodialers from disclosing sensitive and confidential financial data by way of voice messages or any other means. The FDCPA even limits the manner in which a caller is identified when a request to call back is left on an answering machine.[35] Additional prohibitions imposed on debt collection by the FCC under the TCPA would be redundant and unnecessary.

The Public Utility Commission of Texas ("Texas PUC") argues that where a recorded message cannot be fashioned to meet the requirements of both the TCPA and the FDCPA, use of an autodialer should not be permitted.[36] We believe that the problem of inconsistency raised by the Texas PUC will not arise. As the Commission itself noted in the NPRM, "debt collectors should be able to draft identification messages that comply with both statutes [the FDCPA and the TCPA]."[37] No commenter has shown that the Commission was incorrect in reaching this tentative conclusion.

The Commission should adopt a solution that allows the TCPA and the FDCPA to coexist. The Commission can help facilitate this by requiring the recorded message to state, at the beginning of the message, the "identity of the business, individual, or other entity initiating the call," as required under proposed Section 64.1100 (d)(1), "provided such disclosures are not otherwise prohibited or restricted by any federal, state, or

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[35]See 15 U.S.C. § 1692 (c),(e).

[36]Texas PUC Comments at 5-6.

[37]NPRM at n. 23.

local law."[38]

Most commenters support the Commission's proposed position that debt collection calls should be excepted from the Act's prohibitions for autodialed calls.[39] None of the parties opposing the debt collection exemption have presented convincing arguments as to why the Commission should not adopt its tentative decision to exempt such calls from the restrictions in the Act. The Commission should adopt the debt collection exception.

VI. INITIAL COMMENTS SUPPORT COMMISSION RETENTION OF LANGUAGE IN ITS RULES THAT EXTENDS APPLICABLE EXCEPTIONS TO THIRD PARTY AGENTS

The Texas PUC proposes rewording of Section 64.1100(c), by eliminating the words "by, or on behalf of, a caller...." [40] This agency states that this language is "unnecessary" and "confuse[s]" the meaning of the subsection.[41] It is unclear whether the Texas PUC actually believes that the language is unnecessary, or whether it opposes the third party exemption. Regardless, the Commission should reject this recommendation.

The position of the Texas PUC, unsupported by others, is overwhelmed by contrary positions of numerous commenters. The Coalition, for example, argues in support of the Commission's proposed language which would provide that, where an exemption is

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[38]See N.Y. Gen. Bus. Law § 399-p (1992).

[39]Household International Comments at 7; Coalition Comments at 4; ABA Comments at 3; Sears Comments at 3; Ameritech Comments at 6.

[40]Texas PUC Comments at 4.

[41]Id.

applicable, autodialed calls made "by, or on behalf of" the company are exempt.[42] The Coalition correctly notes that the public interest clearly requires that companies have the ability to hire other entities or individuals to engage in debt collection of other telephone related marketing activities on their behalf.[43] This is important for reasons of necessity, economy, and efficiency, especially for small companies that lack the resources to maintain their own telemarketing staffs.

Moreover, in proposing the elimination of the "on behalf of" language, the Texas PUC makes no showing that such calls made "on behalf of" a business are any more intrusive than calls made "by" the exempted business itself. In fact, third party contractors are extensively restricted by the TCPA, as are their principals, in their activities. Third party contractors are not only subject to the same TCPA obligations imposed on the party for whom they are calling; they are also bound by the demanding contractual standards of the entities on whose behalf they are making autodialed calls. [44]

Citicorp believes that "failure to extend the exceptions of the Commission's rules to third party contractors and to affiliates could cripple the telemarketing industry upon which

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[42]Coalition Comments at 8, citing NPRM App. B, Section 64.1100(c).

[43]Coalition Comments at 8.

[44]See Citicorp Comments at 20.

many businesses are dependent."[45] Most telemarketing is currently conducted by third party or affiliated calling enterprises.[46] The Commission should reject the proposal of the Texas PUC and retain its explicit inclusion of third party exemption language in its rules.

VII. INITIAL COMMENTS SUPPORT COMMISSION ADOPTION OF THE "COMPANY-SPECIFIC DO-NOT-CALL" APPROACH

The Commission requested comment on five potential regulatory methods to restrict live operator telephone solicitation to subscribers: national or regional databases, network technologies, special directory markings, industry-based or company-specific do not call lists, and time of day restrictions.[47]

It should be remembered that Congress did not mandate any specific regulatory method. Rather, Congress explicitly gave the Commission the right to determine the method and procedure that is "most effective and efficient" after comparing and evaluating "alternative methods and procedures" including "company-specific do-not-call systems." It is clear after reviewing the comments, the vast majority of which support the company-specific do-not-call approach, that such approach is the "most effective and efficient."

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[45]Citicorp Comments at 20.

[46]See, e.g., ABA Comments at 4; Coalition Comments at 8.

[47]NPRM at paras. 27-33.

A. The Company-Specific Do-Not-Call List Approach Is Superior To The National Database Alternative

A limited number of commenters make unworkable proposals in favor of adoption of a national "do not call" database.[48] For example, Privacy Times supports contracting out to a "neutral" organization to operate the database, which would be updated using a toll-free 800 number. [49] Consumer Action advocates a "National Telemarketing Center" containing a list of consumers who do not wish to receive telephone solicitations.[50] CSC supports a national do-not-call list, arguing that it could be maintained by a telemarketing trade association, like the Direct Marketing Association ("DMA").[51] Conversely, most commenters strongly oppose the nationwide database alternative as infeasible, ineffective, and excessively costly.[52] Noteworthy in opposition are the over fifty newspaper companies and associations which filed comments highlighting the damage that their businesses would experience if the Commission were to

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[48]See, e.g., Privacy Times Comments at 2-3; New York Dept. of Public Service Comments at 1; National Consumers League Comments at 13; Consumer Action Comments at 2.

[49]Privacy Times Comments at 2.

[50] Consumer Action Comments at 2.

[51]CSC Comments at 12. CSC also advocates a national do-call database. Such a do-call database appears to be beyond the authority of the Commission to establish under the TCPA.

[52]See, e.g., Sears Comments at 4-5; American Express Comments at 10; Sprint Comments at 8; Citicorp Comments at 28-31.

require a national do-not-call database.[53]

Those opposing the national do-not-call database make sensible points. They point out that the very nature of the national database ensures that the names on the list will never be totally accurate. There will always be a lag between the time, for example, that a person moves and changes a phone number and the time that such information is entered into the national database. Indeed, none of the commentators supporting the national database explains how numbers will be taken off the database -- in instances where a person, for example, moves and their former telephone number is assigned to someone else. This is much less of a problem under a company-specific do-not-call list where companies can easily adapt lists to the changing circumstances of their customers.

In addition, the national database fails to provide the consumer with the ability to selectively opt-out of calls from undesired telemarketers while continuing to receive telemarketing calls from companies from which solicitations are still desired.[54] The company-specific do-not-call database provides such choice, giving telephone subscribers the opportunity to designate for themselves which telephone solicitations they wish to receive and which they wish to avoid. A consumer can, for

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[53]See, e.g., La Crosse Tribune Comments, Jersey Journal Comments, Huntsville Times Comments, the Baltimore Sun Comments, the Tampa Tribune Comments, the Ohio Newspaper Assoc. Comments, the Los Angeles Daily News Comments, the San Francisco Newspaper Agency Comments, ANPA Comments, Gannett Comments.

[54]See Citicorp Comments at 28-31.

example, inform companies offering cookware that they do not wish to receive telemarketing calls, while permitting companies providing credit card services or floral services the opportunity to make telemarketing calls.

A national database is also infeasible and problematic. One commenter notes that potential antitrust problems await any regulatory solution that authorizes a private entity to carry out administration of the database.[55] Regardless of whether a private entity or the government maintained it, the national database would have to deliver the names and phone numbers of "objectors" in a format compatible with those used by all of the nation's telemarketers. The wide variety of computer systems and identifying information used by the industry would render this standardization process excessively complex for the database administrator and telemarketers.

Such issues do not exist in a company-specific do-not-call list environment. As noted in our comments, the company-specific database already has in place independent, identifying qualifiers for list verification, updating and accuracy.[56] In addition, there would be no need to standardize complex telemarketing systems under the company-specific do-not-call list approach.

The cost of such a national database is another factor which strongly militates against Commission adoption of this alternative. AT&T estimates that establishing a national

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[55]JC Penney Comments at 23.

[56]Citicorp Comments at 29-31.

database could range from $24 million to $80 million, based on the type and sophistication of the customer notification and confirmation systems employed.[57] The costs of such a database, which, according to the TCPA, could not receive federal funds or be charged to residential subscribers, would make telemarketing prohibitively expensive for many companies, and significantly increase the cost of doing business for others. This would ultimately impact consumers, through higher prices for goods and services provided by companies that engage in telemarketing.[58] The company-specific do-not-call list approach avoids the tremendous costs necessary for the creation, maintenance, updating and upgrading of an entirely new national do-not-call database.[59]

As stated in its comments, Citicorp believes that the national database approach should be rejected, and the company-specific alternative should be adopted.[60] However, if the Commission decides to adopt a national database, Citicorp suggests that it include the following specific elements:

1. It should be clear that the database is intended only to list those who do not wish to receive telephone solicitations regardless of whether an artificial or prerecorded voice technology is used in the telephone solicitation. In other words there should not be two databases, one for those

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[57]AT&T Comments at 12.

[58]See, e.g., Citicorp Comments at 28-29; MCI Comments at 5; AT&T Comments at 12.

[59]See Citicorp Comments at 28-29.

[60]Citicorp Comments at 23-30.